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**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Dev Anand Oman, Todd Eichmann, and
Michael Lehr, individually, on behalf of others
similarly situated, and on behalf of the general
public,

Plaintiffs,

v.

Delta Air Lines, Inc.,

Defendant.

Case No. 3:15-CV-00131-WHO

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PARTIAL SUMMARY
JUDGMENT, AND MEMORANDUM OF
LAW IN SUPPORT THEREOF AND IN
OPPOSITION TO DEFENDANT'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Date: November 18, 2015
Time: 2:00 p.m.
Courtroom: 2, 17th Floor
Judge: Hon. William H. Orrick

1 TO DEFENDANT AND ITS COUNSEL OF RECORD: Please take notice that on
2 November 18, 2015, at 2:00 p.m. in Courtroom 2 on the 17th Floor of the above-captioned Court,
3 Plaintiffs will and hereby do move this Court to enter summary judgment, pursuant to Federal Rule
4 of Civil Procedure 56, in their favor on Delta's liability with respect to their First Cause of Action
5 (failure to pay minimum wages in violation of California Labor Code sections 1182.12, 1194,
6 1194.2, and IWC Wage Order 9-2001).

7 This motion is based on this Notice of Motion and Motion, the accompanying
8 Memorandum of Points and Authorities, the Supporting Declaration of Matthew Helland and
9 accompanying exhibits, arguments of counsel, and the papers, records, and pleadings on file in this
10 matter.

11
12 Dated: October 14, 2015

NICHOLS KASTER, LLP

13 By: s/Matthew C. Helland

14 Matthew C. Helland

15 Daniel S. Brome

16 Attorneys for Plaintiffs and the putative
17 class
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MEMORANDUM OF LAW AND POINTS OF AUTHORITIES

I. INTRODUCTION

Delta Air Lines, Inc. (“Delta”) systematically fails to pay flight attendants for pre-flight and post-flight work. Indeed, the entire time Delta flight attendants are performing safety checks, boarding passengers on the plane, and helping passengers load carry-on luggage, they are not being properly paid. While flight attendants are generally required to report for work an hour before their first flight of the day departs, Delta’s standard compensation formula only pays for time after the flight leaves the gate. Similarly, Delta fails to separately compensate flight attendants for time worked after a flight pulls into the gate at its destination.

While this policy is unpopular with flight attendants everywhere, it is not unlawful under federal law or most states’ laws. In California, however, minimum wage laws are significantly more protective for workers, and require employers to pay at least minimum wage for every hour (or part of an hour) worked, not just for every week. Because Delta pays Plaintiffs primary based on the Flight Pay formula, and because the Flight Pay formula fails to pay for pre- or post-flight work, Plaintiffs are entitled to judgment on their minimum wage claims.

Realizing the Flight Pay formula violates California law, Delta focuses its motion on its “1 for 2 Duty Period Credit” formula. According to the plain language of the work rules, however, this formula only pays Plaintiffs for one out of every two hours worked, and Delta fails to create a genuine issue of material fact to show that it operates differently. In the same manner, Delta’s other two pay formulas (Minimum Duty Period Credit / Average and Trip Pay) unambiguously fail to separately pay Plaintiffs for each hour worked. The Court must therefore deny Delta’s motion and enter judgment for Plaintiffs.

In an effort to narrow the impact of its minimum wage violations, Delta argues that the California Labor Code does not protect non-resident flight attendants when they work in California. But as this Court has previously recognized, the California Supreme Court squarely rejects this argument. Delta’s significant California contacts include a payroll of 1,400 California-based flight attendants, a \$229,000,000 investment in Los Angeles International Airport, and a business model that depends on moving customers (and flight attendants) from around the country

1 into California. Accordingly, Plaintiffs now ask this Court to enter summary judgment that Delta,
 2 as Plaintiffs' employer throughout the statutory period,¹ systematically failed to separately pay
 3 Plaintiffs for their work on the ground in California before, after, and between flights.

4 **II. STATEMENT OF FACTS**

5 Plaintiffs are (or were) flight attendants for Delta. (Def. Ans. First Am. Compl., ECF No.
 6 27, ¶¶ 5, 7, 9.) Each Plaintiff came under Delta's employ on May 1, 2009, after Delta's merger
 7 with Northwest Airlines ("NWA"). (*Id.*) At all relevant times, Delta paid its flight attendants
 8 (including Plaintiffs) pursuant to uniform pay practices. (*Id.* ¶ 16; Declaration of Matthew Helland
 9 ("Helland Decl.") Exs. 1-3.) Delta's employment rules and policies for flight attendants are
 10 outlined in a written document called the work rules. The work rules have been modified multiple
 11 times over the past several years; new versions are published periodically (*see id.*), and each page
 12 shows the date that page was last modified. (Moreau Dep. 37:10-38:10.)²

13 All Delta flight attendants have been subject to the same set of work rules since May 1,
 14 2012. (Moreau Dep. 34:17-35:18.) Prior to that date, Delta compensated former NWA flight
 15 attendants (like Plaintiffs) under NWA's pre-merger policies (Helland Decl. Ex. 4³, the "Former
 16 NWA Work Rules"), while pre-merger Delta employees were subject to previous versions of the
 17 current work rules. (*see* Ex. 3.) Delta admits that the Former NWA Work Rules are substantially
 18 similar to the Delta work rules in effect at that time and since. (ECF No. 32 at 8; Ex. 5.)

19 Delta flight attendants work a series of "rotations" throughout the month. "A rotation is a
 20 preplanned sequence of flights that a flight attendant is expected [to work]." (Moreau Dep. 39:9-
 21 10.) Each rotation is made up of one or more "duty periods." A duty period lasts from "the time
 22 that the flight attendant reports for duty, until the time that they are released from duty for that
 23 particular day or period." (Moreau Dep. 40:8-10.) Duty periods have maximum durations, based
 24 on federal regulations. (Moreau Dep. 166:19-167:20.) A duty period consists of one or more

25 _____
 26 ¹ As explained in more detail below, Plaintiffs assert claims—and now seek judgment—for the full
 27 statutory period. (*See* ECF No. 24, ¶¶ 3, 4, 15, 30, 35, 83.) Delta has only moved for summary
 28 judgment for period after May 1, 2012. (ECF No. 32 at 11 (citations are to ECF page numbers).)

² Relevant selections from the Fed.R.Civ.P. 30(b)(6) deposition of Delta Air Lines, Inc., given by
 Mr. Moreau, are attached as Exhibit 18 to the Helland Declaration.

³ All exhibit references are to the Helland Declaration unless otherwise noted.

1 flights, or “segments.” (*See id.* at 41:6-8.) Time between two segments, within the same duty
 2 period, is referred to as “turn time,” “sit time,” or “transit time.” (*Id.* at 44:4-19.) Thus, one or
 3 more flights make up a duty period, and one or more duty periods make up a rotation.

4 The “duty period” comprises flight attendants’ work day, and Delta admits its flight
 5 attendants are “on duty” for the duration of their duty period. (Moreau Dep. 44:25-45:6, 46:17-20
 6 (“a flight attendant during a duty period is on duty, and is subject to the rules and regulations of
 7 Delta Air Lines”); ECF No. 27, ¶ 20.) They are required to report for the start of a duty period at
 8 least an hour prior to the scheduled departure of their first flight for domestic flights, and up to an
 9 hour and half prior to scheduled departure for international flights. (Moreau Dep. 51:5-19; Ex. 6 at
 10 DELTA007277.) If a flight attendant is five minutes late, Delta locates a replacement flight
 11 attendant and removes the flight attendant from the rotation. (Moreau Dep. 53:21-54:4.) After
 12 participating in a preflight briefing and performing other work activities, flight attendants proceed
 13 to the gate for their flight. (*Id.* at 70:8-77:4; Ex. 6 at DELTA007253.) Flight attendants are
 14 required to be at the gate at least 40 minutes prior to departure. (Ex. 6 at DELTA007277.)
 15 Boarding then begins at least 35 prior to departure. (*Id.*) Flight attendants have several work
 16 responsibilities prior to boarding. (*Id.* at DELTA007253-54.) Delta admits flight attendants
 17 perform work prior to each flight’s departure. (ECF No. 27, ¶ 18.) As outlined in more detail
 18 below, however, flight attendants are not paid for this pre-flight time.

19 Flight attendants also have work responsibilities after a plane lands, including deplaning
 20 passengers and performing safety checks. (Ex. 6 at DELTA007257-58.) Flight attendants must
 21 remain on board until all passengers have deplaned except to perform a safety-related duty.
 22 (Moreau Depo. at 158:6-13.) Although Delta admits flight attendants perform work duties after a
 23 plane lands, ECF No. 27, ¶ 19, it does not pay for that time. (*See infra* §§ 1.A, 1.B.) During a turn
 24 (i.e., between flights in the middle of a duty period), flight attendants “must remain at the airport
 25 for possible contact from Crew Tracking. Flight Attendants must be contactable at all times in the
 26 event of changes in flight times or routing.” (Ex. 1 at DELTA000783.) Assuming no changes in
 27 schedule, flight attendants must report to the gate at least 40 minutes prior to the departure of their
 28 next flight. (Moreau Dep. 105:14-106:16; Ex. 6 at DELTA007277.) Even though Delta “considers

the turn time to be duty time for purposes of compensation,” ECF No. 32 at 13, it does not pay Flight Attendants for this time. (*See infra* §§ 1.A, 1.B.) After flight attendants complete their final flight of a duty period, they are released to a hotel for layover (mid-rotation) or to home (at the end of a rotation).

A. Delta Pays Plaintiffs Primarily Under the Flight Pay Formula, Which Does Not Pay For All Hours Worked

Delta expresses flight attendant pay as an hourly “Flight Pay” rate. (Ex. 1 at DELTA000810, Ex. 2 at DELTA000554.) “Flight Attendant compensation is paid as an hourly rate for all hours flown or credited.” (Ex. 1 at DELTA000807; Ex 2 at DELTA000551; *accord* Ex. 4, at DELTA007383-84.) Delta’s “Flight Pay” formula pays flight attendants based on scheduled or actual flight time, which is measured from the time a flight “blocks out” for departure until the time in “blocks in” at arrival. (Ex. 1 at DELTA000810; Moreau Dep. 41:24-42:09, 169:21-23; Ex. 4 at DELTA007375, 87.) For this reason, flight pay is sometimes referred to as “block” pay. Flight Pay does not include time prior to block out or after block in. (Moreau Dep. 169:21-23.) Accordingly, the Flight Pay formula does not pay flight attendants for the one hour (or more) of work from report to departure (including boarding), for turn time, or for deplaning time.

Delta designs its pairings to maximize the number of rotations paid under the Flight Pay formula, thereby minimizing additional compensation through other pay formulas. (Ex. 1 at DELTA000855 (“Pairings are constructed using defined parameters including . . . Cost effectiveness (reduced duty period credit, time away from base, and hotel costs”); Moreau Dep. 183:6-23.) Plaintiffs’ flight records bear out Delta’s intentions. (*See* Exs. 7-9⁴; Frederick Decl. Exs. H, I, J.)⁵ For example, Plaintiff Lehr worked 681 flights into or out of California between January 1, 2011 and May 1, 2015. (*See* Ex. 9; Frederick Decl. Ex. J.) Of those 681 flights, Lehr received some sort of Duty credit on 52 flights, and Trip Credit on 50 flights⁶. (*Id.*) The remaining 579 flights (i.e. **85% percent of Lehr’s California flights) paid Flight Pay only.** (*Id.*) Plaintiff

⁴ In these records, any 1 for 2 Duty Period Credit, Minimum Duty Period Average / Credit, or Trip Credit pay is reflected next to the corresponding flight in the “Duty Cred” or “THC Total” columns. (Moreau Dep. 211:2-10, 222:2-223:24.) Therefore, a flight with a zero in those columns was paid solely based on Flight Pay.

⁵ Delta filed the Frederick Decl. and exhibits at ECF No. 33, 34 and 35.

⁶ These credits are described in more detail below.

1 Eichmann worked 178 flights into or out of California between January 1, 2011 and May 1, 2015.
 2 (*See* Ex. 8, Frederick Decl. Ex. I.) Of those 178 flights, Eichmann received some sort of Duty
 3 credit on 19 flights and Trip Credit on 10 flights. (*Id.*) The remaining 149 flights (i.e. **84% of**
 4 **Eichmann's California flights) paid Flight Pay only.** (*Id.*) Plaintiff Oman worked at least 27
 5 flights into or out of California between November 24, 2011 and August 8, 2014. (*See* Ex. 7,
 6 Frederick Decl. Ex. H.) Of those 27 flights, Oman received 10 minutes of Duty Period credit on 1
 7 flight, and 13 minutes of Trip Credit on 1 other flight. (*Id.*) The remaining 25 flights (i.e. **93% of**
 8 **Oman's California flights) paid Flight Pay only.** (*Id.*)

9 **B. Delta's Other Compensation Formulas Provide Additional Pay for Some, But**
 10 **Not All, Hours Worked**

11 Delta's three remaining pay formulas (Minimum Duty Period Credit / Average; Trip
 12 Credit; and 1 for 2 Duty Period Credit) sometimes pay flight attendants additional compensation
 13 on top of flight pay for some (but not all) hours worked. Delta's documents clearly describe these
 14 pay formulas and evidence their operation.

15 **1. Minimum Duty Period Credit / Average**

16 The Minimum Duty Period Credit / Average formulas applied at different times under the
 17 work rules. The current version of the work rules applies a Minimum Duty Period Credit. Under
 18 this credit, Delta pays a minimum of 4 hours and 45 minutes (or "4:45") for each duty period in a
 19 rotation. (Moreau Dep. 169:25-170:5; Ex. 1 at DELTA000812.) The credit is paid at the flight pay
 20 rate. (*Id.* at 170:7-10.) Previous versions of the work rules applied a Duty Period Average. (*Id.* at
 21 174:15-17; Ex. 2 at DELTA000556.) The Duty Period Average took the entire rotation into
 22 account and guaranteed a total credit of at least 4:45 times the number of duty periods in the
 23 rotation. (*Id.* at 175:4-22.) The work rules do not define which portion of the duty period the 4:45
 24 guarantee is meant to compensate. (Ex. 1 at DELTA000812.)

25 Under the Former NWA Work Rules, the Minimum Duty Period Credit paid a minimum of
 26 4:15 of flight pay for each duty period. (Ex. 4 at DELTA007384.) The rules expressly provided
 27 that the credit "shall be computed and credited as a continuation of the last flight in the duty period
 28 or trip hour period." (*Id.*) Thus, the credit expressly failed to compensate flight attendants for turn
 time or pre-flight time earlier in the duty period. Delta's records show that under all versions of the

rules, the Minimum Duty Period Credit applies like the 1 for 2 Duty Period Credit; credit is added to the flight attendant's block time, and all credits are paid at the flight pay rate. (*See*, Exs. 7-9.)

2. Trip Credit

Some version of the Trip Credit has always existed under the work rules. (Moreau Dep. 173:23-175:1.) The credit pays "one hour for every 3.5 hours" of time "[f]rom the first report of the rotation until the last release of the full rotation." (*Id.* at 170:19-171:3; *accord* Ex. 1 at DELTA000813.) "It is paid at the hourly flight pay rate." (*Id.* at 171:7.) Although the credit pays only 1 hour out of every 3.5 hours, the rules do not identify *which* hours are compensated. (*See* Ex. 1 at DELTA000813.)

Under the Former NWA Work Rules, the Trip Hour Credit pays 1 hour of flight pay for each 3 hours and 36 minutes of a rotation. (Ex. 4 at DELTA007384.) Like the Minimum Duty Period Credit, this credit was applied to the end of the duty period or trip, (*id.*) and therefore did not compensate flight attendants for any turn time or pre-flight time earlier in the duty period. Like the duty period credits, and under all versions of the work rules, Trip Credit is added to the flight attendant's block time and is paid at the flight pay rate. (*See*, Exs. 7-9.)

3. 1 for 2 Duty Period Credit

Delta's motion for summary judgment relies most heavily on the 1 for 2 Duty Period Credit. However, the motion fundamentally misrepresents the Duty Period Credit calculation. Delta's work rules state the formula concisely: "You will be credited with **1 hour of flight pay for every 2 hours on duty.**" (Ex. 1 at DELTA000811; Ex. 3 at DELTA002428; *accord* Ex. 4 at DELTA007384 (depending on the report time, Duty Period Credit pays 1 hour of flight pay for every 2 hours of duty or 1 hour flight pay for each one hour and 1:45 of duty hours).) Thus, the 1 for 2 Duty Period Credit pays flight attendants for half their hours worked. The work rules are explicit that this credit supplements Flight Pay, and not the other way around: "The 1 for 2 Duty Period Credit will be credited at the end of the duty period in which it was earned and on the calendar day the last flight for that duty period was scheduled to depart." (Ex. 1 at DELTA000811.) The work rules contain examples of the 1 for 2 Duty Period Credit for clarity:

Example C – Pays 1 for 2 Duty Period Credit: A 12:30 duty day with 5:10 flight time. The pay calculation compares the flight time of 5:10, to the minimum duty

period credit of 4:45, and to the 1 for 2 duty period credit of **6:15 (12:30 divided by 2)**. The total pay for this duty period is **6:15** of 1 for 2 duty period credit.

(Ex. 1 at DELTA000807 (emphasis added).)

Example: You are scheduled for a turnaround worth 6:00 block time with a scheduled duty period length of 10:00. Due to an operational delay, your duty period is lengthened to 14:00. **You will be paid 7:00** for the turnaround, comprised of 6:00 block time and 1:00 of 1 for 2 duty credit (**14:00 divided by 2**).

(*Id.* at DELTA000811, Ex. 3 at DELTA002428 (emphasis added).)

Delta's corporate designee confirmed the Duty Period Credit calculation:

Q: And then what is the 1 for 2 Duty Period Credit?

[objection omitted]

A: . . . For every two hours on duty, **one hour will be credited and paid at the flight pay rate**.

(Moreau Dep. 170:12-17 (emphasis added).)⁷ He later testified that the description of the 1 for 2 Duty Period Credit contained in the rules ("You will be credited with one hour of flight pay for every two hours on duty for any given duty period") accurately reflects Delta's actual practices with respect to the calculation of 1 for 2 Duty Period Credit, and that the formula has been the same since at least January 1, 2011. (*Id.* at 175:23-176:17.)

Towards the end of his deposition, however, Mr. Moreau (perhaps recalling Delta's theory of the case) changed his explanation. He testified that the 1 for 2 Duty Period Credit formula compensates flight attendants for all hours worked, and that it is the only work rule to do so. (Moreau Dep. 183:25-184:24, 193:9-23.) When asked to reconcile this new explanation with the plain language of the work rules, Mr. Moreau's explanation devolved:

Q. What rate are they compensated for all hours on duty?

A. **They are credited with one hour for -- actually, they are compensated at a minimum** of one-half of their flight hourly rate for every hour on duty.

Q. Can you show me where in the flight attendant work rules there is a reference to flight attendants being paid at half their flight pay rate?

A. **There is no specific reference.**

. . .

Q. And this example does not say that under the duty period credit, the flight attendant is paid for 12 hours and 30 minutes of duty period at half their flight pay rate; correct?

⁷ Incredibly, Delta cites this passage for its factual assertion that the 1 for 2 Duty Period Credit pays *one-half the pay rate for all hours on duty*. See ECF No. 32, at 19. In truth, **Mr. Moreau testimony was exactly the opposite; the Duty Period Credit pays one hour of pay for every two hours on duty**. (Moreau Dep. 170:12-17.) Delta also cites page 181 of Eichmann's deposition on this point, which contains no discussion of the Duty Period Credit.

[Objection omitted]

A. The example states that there is a 12 hour and 30 minute duty period, and it also states – as a pay calculation. And it also shows the pay calculation of 12:30 divided by 2, which will establish an effective rate for the flight attendant, which is half of their hourly rate. So it is clear from the division of 12:30 divided by 2 that the calculation starts at the beginning of the duty period, and ends at the end of the duty period, because it is exactly the same as a duty period.

...

Q. . . . please show me in this example where it says that the flight pay rate is divided by two, and paid across 12 hours and 30 minutes of work?

[Objection omitted]

A. Well, the document clearly states that it is 12 hours and 30 minutes divided by two. It states that's a paid calculation. The calculation of taking the entire duty period of 12 hours and 30 minutes, which is equal to the math and divided by 2, means that when you pay that, you are paid for the entire 12 hours and 30 minutes at half the flight hourly rate. It's math.

(Moreau Dep. 185:1-9, 190:24-191:14, 192:6-19 (emphasis added).) As Mr. Moreau's shifting (and at times unintelligible) testimony confirms, there is no factual support for Delta's theory that the 1 for 2 Duty Period Credit pays flight attendants at half their pay rate for all hours worked.

Indeed, Delta's documents confirm the 1 for 2 Duty Period Credit pays the *flight pay rate for half the hours worked*, as opposed to *half the flight pay rate for all hours worked*. For example, the work rules confirm that hours flown or credited will be paid at the flight attendant's flight pay rate. (See Ex. 1 at DELTA000807, 10-13; Ex. 2 at DELTA000551, 54-57; Ex. 3 at DELTA002423, 26-29, Ex. 4 at DELTA007353, 83-84.) The work rules list flight attendants' flight pay rates, (Ex. 1 at DELTA000810, Ex. 2 at DELTA000554, Ex. 3 at DELTA002426, Ex. 4 at DELTA00007353), but contain no mention of pay at half the flight attendants' pay rate. (*Id.*; Moreau Dep. 193:3-22.) Indeed, **Delta's own motion confirms that "Delta calculates the total number of credits a Flight Attendant would receive under each formula [and] multiplies it by the Flight Attendant's Pay Rate."** (ECF No. 32, at 18 (emphasis added).)

By way of contrast, Delta's work rules outline other types of compensation and reimbursement in great detail. (See, e.g., Ex. 1 at DELTA00813⁸ (\$9.00 per hour for Surface Deadheads), DELTA000814 (\$10.80 report pay for cancelled trips), DELTA00815 (expense reimbursement for meals at \$2.20 per hour), DELTA00817 (Holding Pay of \$15.00 and Flight Pay

⁸ Plaintiffs do not include cross-citations to the other versions of the rules for ease of reading.

for Ground Time in certain delay / reroute situations), DELTA000818 (Crew Compensation Pay of \$7.25 for flight time when a flight is understaffed; International Pay of \$1.25 per hour of flight time for international flights; additional pay when serving as Purser or Flight Leader), DELTA000819 (Language of Destination Pay of \$1.80 per hour of flight time), DELTA000821 (draft pay), DELTA000823 (rerouted into off day pay), DELTA000824 (rerouted into vacation day pay), DELTA000826 (incentive pay for picking up flights), DELTA000827 (Holiday Pay).

Likewise, Delta's flight records and wage statements only list the flight pay rate for hours flown or credited; they do not report *any* hours worked at *half* the flight pay rate. (See Ex. 9 at DELTA005554-55 (showing 1 minute of duty credit for June 21, 2012, and three minutes of Trip Credit for June 3, 2012, and explaining "to calculate what you were paid," a flight attendant should "take minutes flown . . . multiplied by **your pay rate** for total dollars paid.") (emphasis added); Ex. 10 at DELTA005195-96 (June 2012 wage statements include pay for hours worked at full flight pay).) This makes sense, because, again, the 1 for 2 is a credit, applied "at the end of the duty period." (Ex. 4 at DELTA000811.) Delta's flight records confirm that it treats duty period pay as additional pay on top of *flight pay*, and that duty period time is paid at the *flight pay rate* for *half* the hours worked. (Moreau Dep. 222:2-7; Exs. 7-9.) A selection from those records is reproduced here (with corresponding headers) for the Court's convenience.

FLIGHT NUMBER	DATE	DY	SEGMENT FROM TO	REPT TIME	BLOCK OUT	BLOCK IN	ACTL TIME	SCHD/MKT TIME	DUTY CRED
1221	18-Jun	MO	SFO ATL	2225	2327	658	433	0433*	0
1528	19-Jun	TU	ATL MSP	1640	1802	1926	247	0247*	0
759	19-Jun	TU	MSP GEG		2248	2341	305	0305*	0
1037	20-Jun	WE	GEG SLC	1205	1302	1525	137	0137*	0
2360	20-Jun	WE	SLC DCA		1652	2256	409	0409*	0
629	21-Jun	TH	DCA DTW	1140	1234	1356	135	0135*	0
237	21-Jun	TH	DTW SFO		2011	2245	0534*	504	1

(See Ex. 9 at DELTA005554.) Delta's corporate representative confirmed that the data identifies flight hours paid at the Flight Pay rate (under ACTL TIME), and **one minute of 1 for 2 Duty**

1 **Period Credit paid at the Flight Pay rate** (under the DUTY CRED) column.⁹ (Moreau Dep.
2 225:4-226:6.) Throughout the thousands of documents produced in discovery, Delta has not
3 produced a single document evidencing payment to flight attendants at one half their pay rate.

4 Delta's failure to pay flight attendants for all hours worked is not a matter of mere
5 semantics. According to a Delta Vice President, Delta flight attendants have requested additional
6 pay for the boarding process for years. (Ex. 11 at DELTA007330.) And a survey of flight
7 attendants earlier this year "showed that 'boarding pay' continues to be an item of focus for flight
8 attendants across the system." (*Id.*) By Delta's own admission, "boarding multiple legs in a duty
9 period can be more demanding for flight attendants." (*Id.*) In response to its flight attendants'
10 concerns about the lack of boarding pay, Delta considered paying flight attendants \$10-\$20 per
11 hour for boarding flights. (*Id.*) However, Delta rejected the idea based on cost. (*Id.*)

12 **C. Delta's Business Model Requires its Flight Attendants to Have Significant
13 Contacts with California**

14 Delta's business model depends on moving customers – along with its flight attendants –
15 into and out of the state of California. Indeed, as a Delta senior executive recently noted in a press
16 release, "New York-JFK to Los Angeles and San Francisco are essential domestic markets from
17 New York City, and Delta is committed to offering our customers a superior schedule and product
18 on these routes." (Ex. 12 at P0001372.) New York-JFK to LAX and SFO are "two of the busiest
19 routes in the United States," and Delta prides itself on its industry "leading position" on these
20 routes, offering "the most seats of any airline." (*Id.*) Delta's recent \$229,000,000 facilities
21 investment at LAX, and a new Delta Sky Club at SFO, further evidence the importance of these
22 destinations to Delta. (*Id.* at P0001373.)

23 Although Delta is headquartered in Georgia, it is a sizeable California employer. Delta has
24 maintained a payroll of over 1,400 California-based flight attendants throughout the last five years.
25 (Ex. 13, Delta Supp. Resp. Oman Irog. No. 2.) Delta paid \$50 million to California employees in
26 profit sharing alone in 2014. (Ex. 14.) Since the profit sharing equaled over 16% of employees'

27 ⁹ For ease of use, not all of the columns are included. This sample is from May 2012, after full
28 integration of former NWA flight attendants. However, Ex. 9 also contains records, from when
Plaintiffs were paid under the Former NWA Work Rules, and they are virtually identical. (*See* Ex.
9 at DELTA005550.)

1 annual earnings, *id.*, Delta paid over \$312,000,000 in wages to California employees in 2014. (*Id.*)

2 Importantly, however, Delta’s contacts with California are not limited to its California-
3 based employees; non-California flight attendants also have significant contacts with the state. For
4 example, in April 2015 flight attendants based at non-California airports flew 24,488 flight legs
5 into or out of the state of California. (Ex. 15, Delta Supp. Resp. Oman Doc. Req. Nos. 8, 10.)
6 Assuming an average of 37.5 minutes of uncompensated work time in California for each flight
7 (based a one hour report time for departures and fifteen minutes deplaning for arrivals), these flight
8 attendants worked 15,305 uncompensated hours in California last April. Extrapolated over a year,
9 this equates to an annual average of 293,856 California flight legs, and 183,660 uncompensated
10 California hours, worked by flight attendants based outside the state of California.

11 **III. ARGUMENT**

12 On cross motions for summary judgment, “each motion must be considered on its own
13 merits.” *Fair Housing Council of Riverside County, Inc. v. Riverside Two*, 249 F.3d 1132, 1136
14 (9th Cir. 2001). The Court must determine, “for each side, whether judgment may be entered in
15 accordance with the Rule 56 standard.” *Id.* Summary judgment is appropriate here because there
16 are no genuine disputes over material facts. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323
17 (1986). Delta’s work rules set out its pay policies, and its business records and corporate testimony
18 confirm that it followed those policies. Because Delta’s stated policies do not separately pay flight
19 attendants for all hours worked as required by the California Labor Code, Delta cannot avoid
20 summary judgment by arguing “some metaphysical doubt as to the material facts.” *Matsushita*
21 *Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Instead, the Court should grant
22 Plaintiffs’ motion because there are no genuine issues of material fact and Plaintiffs are entitled to
23 judgment as a matter of law. *See Fed. R. Civ. P.* 56.

24 California’s minimum wage requirements derive from the Labor Code and the Industrial
25 Welfare Commission (“IWC”) Wage Orders. The Wage Orders are “‘presumptively valid’
26 legislative regulations” and must be given effect separately from statutory enactments. *Brinker*
27 *Rest. Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012). Wage Order 9-2001 regulates
28 employment conditions for workers in the transportation industry. Cal. Code Regs. tit. 8 § 11090.

1 Wage Order 9 requires that “[e]very employer shall pay to each employee wages not less than [the
 2 minimum wage] for all hours worked. . .” *Id.*¹⁰ Two points about this requirement bear special
 3 emphasis. First, the requirement applies “by [its] terms to all employment within the state, without
 4 reference to the employee’s place of residence.” *Sullivan v. Oracle*, 51 Cal.4th 1191, 1197 (2011)
 5 (describing Labor Code’s overtime requirements). Second, California law requires minimum wage
 6 for all hours worked; this requirement differs significantly from the federal overtime law, which
 7 ties coverage to “any workweek.” *Armenta v. Osmose*, 135 Cal.App.4th 314, 323 (2005).

8 As explained in greater detail below, these concepts require summary judgment for
 9 Plaintiffs. Contrary to Delta’s unfounded assertions, California law applies to time worked by
 10 flight attendants on the ground in California, regardless of their place of residence. And Delta
 11 consistently fails to pay Plaintiffs and flight attendants for all their hours worked, in violation of
 12 California’s minimum wage requirements. Plaintiffs are therefore entitled to summary judgment.

13 **A. California Minimum Wage Law Applies to Work Performed in California by**
 14 **Delta Flight Attendants**

15 Through this case, Plaintiffs seek payment according to California law for time worked in
 16 California. The Labor Code, Wage Orders, and controlling decisions are very clear: the Labor
 17 Code applies to work performed in California. California has substantial contacts with the claims
 18 at issue, justifying California’s interest in applying its laws. Because no federal law bars the
 19 application of California’s minimum wage law to the time period or claims at issue, the Court must
 20 apply California law to all time worked in California.

21 The California Supreme Court recently held that “California’s overtime laws apply by their
 22 terms to all employment in the state, without reference to the employee’s place of residence.”
 23 *Sullivan*, 51 Cal.4th at 1197. The court grounded this conclusion in the Legislature’s explicit
 24 declaration that rights under state law are available to all individuals “who are or who have been
 25 employed” in California. *Id.* at 1198, citing Lab. Code § 1171.5(a). The court began with the text
 26 of the Labor Code, noting that the laws “speak broadly, without distinguishing between residents
 27 and nonresidents,” and instead apply to “any employee.” *Id.* at 1197. The court also noted that the

28 ¹⁰ The current minimum wage is \$9.00 per hour. Cal. Lab. C. § 1182.12.

1 Legislature has created limited exemptions for out-of-state employers from workers' compensation
2 law, but did not include those exceptions for overtime requirements. *Id.* at 1197-98.

3 While the workers in *Sullivan* were seeking overtime, and the court's analysis was
4 therefore focused on overtime, "there is no reason to limit its holding only to overtime cases."
5 *Aguilar v. Zep Inc.*, 2014 WL 4245988, at *13 (N.D. Cal. 2014). Like California's overtime rules,
6 minimum wage requirements exist to ensure that workers "are fairly compensated for their work."
7 *Id.* (citing *Campagna v. Language Line Servs., Inc.*, 2012 WL 1565229, at *4 (N.D. Cal. 2012)).
8 Indeed, the *Sullivan* court specifically referred to Labor Code § 1194, which authorizes "any
9 employee receiving less than the legal minimum wage or the legal overtime compensation" to
10 bring a civil action. *Sullivan*, 51 Cal.4th at 1197.

11 As this Court held in *Aguilar*, it is broadly recognized that application of California's
12 employment laws turns on where the work at issue is performed:

13 Since the court's holding in *Maez*, which focused on 'the location of Plaintiff's
14 employment,' several courts have also found that 'the critical factor is where the
15 work at issue is performed' by the plaintiff. *Cotter v. Lyft, Inc.*, 13-cv-04065 VC,
16 2014 WL 3884416, at *3 n.2 (N.D. Cal. Aug. 7, 2014) (citing *Jimenez v. Servicios*
17 *Agrícolas Mex, Inc.*, 742 F. Supp. 2d 1078, 1099 (D. Ariz. 2010) ('Other courts
18 have similarly concluded that the place where the work takes place is the critical
19 issue'); *Sarviss v. Gen. Dynamics Info. Tech., Inc.*, 663 F. Supp. 2d 883, 900 (C.D.
20 Cal. 2009) (focusing on the 'situs of employment as opposed to residence of the
employee or the employer'); *Priyanto v. M/S Amsterdam*, No. 07-cv-3811 AHM,
2009 WL 175739, at * 8 (C.D. Cal. Jan. 23, 2009) ('Plaintiffs cannot show that
they work in the state of California, and consequentially cannot show that . . . the
California wage and hour laws can be applied to them'). *See also Tidenberg v.*
Bidz.com, Inc., 2009 WL 605249, at *4 (C.D. Cal. Mar. 4, 2009) (explaining that
the UCL applies to 'unlawful conduct [that] took place in California' because
'state statutory remedies may be invoked by out-of-state parties when they are
harmed by wrongful conduct occurring in California').

21 *Aguilar*, 2014 WL 4245988, at *12. Here, because all the work at issue occurred in California,
22 California law must apply. *Sullivan*, 51 Cal.4th at 1197; *see* Lab. C. §§ 1182.12; 1194; 1194.2.

23 Moreover, IWC Wage Order 9 explicitly covers employees working for interstate carriers,
24 and includes an exception from some of its provisions for "those employees who have entered into
25 a collective bargaining agreement under and in accordance with the provisions of the Railway
26 Labor Act, 45 U.S.C. Sections 151 et seq." Cal. Code Regs. tit. 8 § 11090(1)(E). But this
27 exemption *does not cover minimum wage requirements*. *See id.*, §§ 11090(1)(E); 11090(4). As the
28 court recognized in *Sullivan*, the existence of this limited exemption is powerful evidence that the

1 IWC intended the minimum wage requirements to apply broadly. *See* 51 Cal.4th at 1197-98.

2 Thus, the Labor Code and Wage Order 9 apply to work performed in California by Delta
3 flight attendants, such as Plaintiffs, without regard to their place of residence. These provisions are
4 enforceable by out-of-state flight attendants because (1) California has a significant aggregation of
5 contacts to the claims asserted to justify its interest in enforcing its laws, and (2) no federal law
6 precludes application of California law.

7 **1. California Has Significant Interest in Applying its Laws to Work
8 Performed in California**

9 In April of this year alone, Delta flight attendants based outside of California flew **24,488**
10 flights into or out of California. (Ex. 15, Delta's Resp. to Oman Doc. Req. Nos. 8, 10.) At that rate,
11 non-California-based flight attendants would work approximately **294,000** California flight legs
12 over a year. This is a massive volume of work, and easily justifies California's interest in applying
13 its minimum wage laws to flight attendants based elsewhere.

14 To fall under the Labor Code's protection, non-resident plaintiffs "must allege that there is
15 'significant contact or a significant aggregation of contacts to the claims asserted to ensure that
16 application of the state law to a defendant's conduct would not violate the Constitution.'" *Aguilar*
17 *v. Zep Inc.*, 2014 WL 4245988, at *13 (N.D. Cal. 2014) (quoting *In re Hitachi Television Optical*
18 *Block Cases*, 2011 WL 9403, at *10 (S.D. Cal. 2011)). In *Aguilar*, the court considered cross
19 motions for summary judgment as to Labor Code claims for workers who worked partially in
20 California and partially out of California. *Id.* at *1. One of the plaintiffs there, Theron Lee, first
21 worked as a sales representative in California, but then moved to Nevada and worked in both
22 states. *Id.* at *5. Lee "began his work day at his home in Nevada, traveled across the border into
23 California for part of the day, and ended back home in Nevada." *Id.* The parties disputed whether
24 California law applied "to the work that Lee performed in California while he was a resident of
25 Nevada." *Id.* at 11. The Court recognized that a Georgia corporation could have substantial
26 contacts in California where "it conducts substantial business in California through its California
27 offices, has several sales representatives in California, and . . . generates substantial revenue from
28 its sales in California." *Id.* at *13.

Here, Delta's contacts with California are dramatically more significant than Zep's. Delta

1 recently invested \$229,000,000 improving its facilities at LAX, Delta considers routes from New
 2 York to California “essential,” and its routes to LAX and SFO¹¹ are two of the busiest in the
 3 United States. (Ex. 12.) Delta has consistently employed over 1,400 California-based flight
 4 attendants, and flies many more flight attendants into California every day. (Exs. 13-14.) These
 5 facts demonstrate Delta’s substantial contacts with California.

6 The fact that flight attendants may be in California for relatively short stints is of little
 7 significance given the scope of Delta’s California presence. Importantly, out-of-state flight
 8 attendants only enter California because of Defendant’s business model: each trip to California
 9 generates revenue for Delta, and is part of Delta’s larger business goal of providing coverage to a
 10 wide variety of destinations. It should be self-evident that providing service to California from
 11 outside of California is important for Delta’s business. The trips that Plaintiffs flew are part of that
 12 business. There is no Constitutional problem in requiring Delta to comply with California law for
 13 everyone it employs in California, regardless of their residence.

14 **2. No Federal Law Prevents Application of California Minimum Wage Law**

15 California’s ability to regulate work performed within its borders is subject to some federal
 16 limitations. *E.g.*, *Cotter v. Lyft*, 60 F.Supp.3d 1059, 1061 (N.D. Cal. 2014). Importantly, however,
 17 Delta’s motion stops short of arguing that California’s minimum wage law is preempted (despite
 18 pleading preemption defenses). It instead argues, without explanation, that *only* Fair Labor
 19 Standards Act (FLSA) minimum wage requirements should apply. (ECF No. 32 at 24, n. 19.) Delta
 20 offers no compelling reason to conclude that federal law limits state minimum wage law.

21 Indeed, the FLSA’s plain language makes clear that states may establish wage laws that are
 22 more protective than the federal standard. 29 U.S.C. § 218(a) (“No provision of this chapter . . .
 23 shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a
 24 minimum wage higher than the minimum wage established under this chapter. . .”). Courts have

25 _____
 26 ¹¹ In light of Delta’s arguments concerning the geographic reach of San Francisco’s Minimum
 27 Wage Ordinance, Plaintiffs hereby withdraw their claims under that Ordinance. Plaintiffs may later
 28 seek leave to amend in order to assert claims under SFO-specific regulations, including SFO’s
 Quality Standards Program and the San Francisco Minimum Compensation Ordinance. Relatedly,
 the named Plaintiffs do not appear to have worked more than two hours in a workweek at San Jose.
 Plaintiffs may later seek leave to amend to add Plaintiffs with San Jose claims.

consistently held that this savings clause prevents federal preemption of state wage and hour laws. *See, e.g., Tidewater Marine W., Inc. v. Bradshaw*, 14 Cal. 4th 557, 566-67 (1996); *Pac. Merch. Shipping Ass'n v. Aubry*, 918 F.2d 1409, 1424 (9th Cir. 1990); *Knepper v. Rite Aid Corp.*, 675 F.3d 249, 263-64 (3d Cir. 2012); *Shahriar v. Smith & Wollensky Rest. Grp., Inc.*, 659 F.3d 234, 248 (2d Cir. 2011); *Spoerle v. Kraft Foods Global, Inc.*, 614 F.3d 427, 430 (7th Cir. 2010).

Likewise, the Federal Aviation Administration Authorization Act (“FAAAA”) preempts state laws that regulate “prices, routes, or services” of air carriers,¹² but does not preempt generally applicable employment laws. *Californians For Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184, 1186 (9th Cir. 1998) (prevailing wage law not preempted). The California Supreme Court and the Ninth Circuit recently rejected FAAAA preemption of state employment laws. *Harris v. Pac Anchor*, 59 Cal.4th 772, 785 (2014) (UCL claims arising from trucking company’s independent contractor misclassification are not preempted. The Labor Code sections at issue were “laws that regulate employer practices in all fields and simply require motor carriers to comply with labor laws that apply to the classification of their employees.”), *cert. denied* 135 S. Ct. 1400 (2015); *Dilts v. Penske Logistics, LLC*, 769 F.3d 637, 647 (9th Cir. 2014) (meal and rest break laws not preempted because they “do not set prices, mandate or prohibit certain routes, or tell motor carriers what services they may or may not provide, either directly or indirectly.”), *cert. denied* 135 S. Ct. 2049 (2015). As recognized in *Harris*, California’s minimum wage laws apply generally; they do not tell airlines what they must charge or where they may fly. 59 Cal.4th at 785. Thus, FAAAA preemption does not apply. *See Quezada v. Con-Way Freight, Inc.*, 2012 WL 2847609, at *6-7 (N.D. Cal. 2012) (the construction of California law requiring minimum wage for each hour worked “is not preempted by the FAAAA.”)

The Railway Labor Act (“RLA”) also does not preclude application of California’s

¹² 49 U.S.C. § 41713 (“a State . . . may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide air transportation under this subpart.”) This language was formerly part of the Airline Deregulation Act, but then combined with the Motor Carrier Act into the FAAAA. That Act contains identical language for motor carriers, so preemption decisions under both acts are applicable. *See* 49 U.S.C. § 14501(c)(1) (“a State . . . may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier...”).

1 minimum wage laws to an interstate air carrier. The RLA was designed to promote industrial peace
 2 and national uniformity among the nation's rail (and later air) carriers. 45 U.S.C. § 151a.
 3 Accordingly, it preempts certain disputes that would require interpreting a valid collective
 4 bargaining agreement. *Angeles v. U.S. Airways, Inc.*, 2013 WL 622032, at **5-6 (N.D. Cal. 2013).
 5 Here, none of the work rules provide the required dispute resolution procedure that could trigger
 6 preemption. The Former NWA Work Rules were initially bargained. However, after the November
 7 2010 union vote, former NWA flight attendants "[were not] represented by a certified union"
 8 meaning Delta could not comply with the grievance procedures in the contract. *McMahon v. Delta*
 9 *Air Lines, Inc.*, 830 F. Supp. 2d 674, 694 (D. Minn. 2011); *see also* Ex. 16 ¶ 3. Moreover, even if
 10 there were a valid CBA, Plaintiffs' minimum wage claims are not preempted because they can be
 11 adjudicated without interpreting any contract. Instead, the Court need only look at the records of
 12 hours worked and wages paid in order to determine if Delta complied with the law. *See Angeles*,
 13 2013 WL 622032 at **6-7 ("determining whether or not Plaintiffs worked overtime-eligible hours,
 14 and were paid the specified rates, are factual questions that do not require the interpretation of any
 15 terms of the CBA."). The RLA offers no barrier to application of California's minimum wage law.

16 Delta would prefer not to apply California law, but offers no legitimate legal basis to show
 17 either that state law does not apply to the work in question, or that federal law precludes
 18 application of state law. Plaintiffs are entitled to California's minimum wage protections.

19 **3. Delta's "de minimis" Defense Cannot Preclude the Application of** 20 **California Law or a Finding of Liability**

21 Delta has failed to pay flight attendants working in California for thousands of hours.
 22 Among the many arguments Delta asserts as to why it should not have to pay for this work, Delta
 23 suggests that this time is so miniscule that it should not even count. Delta is wrong.

24 First, Delta cites no legal authority for its argument that the hours of California work time
 25 at issue are *de minimis*, and "[i]t is not clear that the *de-minimis* rule applies under California law."
 26 *Stiller v. Costco Wholesale Corp.*, 298 F.R.D. 611, 626 n. 7 (S.D. Cal. 2014). Second, even if the
 27 *de minimis* doctrine exists under California law, it would not apply on these facts. The federal *de*
 28 *minimis* doctrine examines "(1) the practical administrative difficulty of recording the additional
 time; (2) the aggregate amount of compensable time; and (3) the regularity of the additional work."

1 *Rutti v. Lojack Corp.*, 596 F.3d 1046, 1057 (9th Cir. 2010).¹³ Here, Delta *does* track the time at
 2 issue, *see* Exs. 7-9, it just chooses not to pay for it. Likewise the amount of compensable time is
 3 significant in the aggregate: over 15,000 hours in a single month. And the work is exceedingly
 4 regular – it happens before and after every single flight. Delta cannot cite any cases suggesting that
 5 an hour and fifteen minutes of work time at the start and end of every duty period (not to mention
 6 turn time) is *de minimis*.

7 **4. Plaintiffs Do Not Seek Extraterritorial Application of California Law**

8 Delta spends two-and-a-half pages attacking the straw man argument that Plaintiffs seek
 9 extraterritorial application of California law. That is not the case. Plaintiffs have clearly
 10 communicated to Delta, in their discovery responses and elsewhere, that they only seek recovery
 11 for time worked within the State of California. (*See* Frederick Decl. Exs. H, I, J.) Delta’s legal
 12 obligation is simple and clear: it must comply with California law whenever its employees work in
 13 this state. This obligation does not burden the Commerce Clause.

14 **B. Delta Violates California’s Minimum Wage Law by Failing to Compensate Flight Attendants for All Hours Worked in California**

15 California’s minimum wage law, as set out in the Labor Code and in Industrial Welfare
 16 Commission (“IWC”) Wage Orders, is different—and more protective—than federal minimum
 17 wage or the minimum wage laws of most other states. The most important difference here is that
 18 California requires that employers pay minimum wage for each hour worked, and does not allow
 19 employers to satisfy minimum wage obligations by showing that employees earned, on average,
 20 more than minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal.App.4th 314, 323-24 (2005).

21 While Delta applies multiple formulas to calculate flight attendant pay, the basic structure
 22 of their pay plan is not complicated: “Flight Attendant compensation is paid as **an** hourly rate for
 23 **all hours flown or credited.**” (Ex. 1 at DELTA000807 (Emphasis added).) Nothing in Delta’s
 24 policies provides an alternate base pay rate other than the flight pay rate.¹⁴ (*See* Moreau Dep. at
 25

26 ¹³ Delta may have avoided the actual *de minimis* doctrine because it failed to plead it as an
 27 affirmative defense. (*See* ECF No. 27.)

28 ¹⁴ In some instances, flight attendants may earn additional amounts above their flight pay rate for
 time spent in flight, such as by working as the lead flight attendant. However, this additional pay
 does not cover the time at issue here. *See* Ex. 1 at DELTA000813-27. For example, “Time Away

192:6-193:22.) Instead, Delta pays that single rate for all hours “flown or credited,” and its formulas show that the “hours credited” under the Flight Pay and 1 for 2 Duty Period Credit formulas will always be less than the “hours worked.” Like the 1 for 2 Duty Period Credit, the Trip Credit and Minimum Duty Period formulas fail to tie the compensation directly to the work being done. Delta therefore violates California’s minimum wage law, and Plaintiffs are entitled to summary judgment.

1. Delta’s Flight Pay Formula Violates California Law

Delta’s Flight Pay formula is a shining example of the sort of pay practice that California prohibits. The Flight Pay formula only compensates flight attendants for the time between each flight’s “block out” (i.e., departure) and “block in” (i.e., arrival).¹⁵ Flight attendants are paid for this time at their flight pay rate, which is often well above the minimum wage. However, California does not permit an employer to compensate workers at less than minimum wage for *any* hours worked, even if they are compensated at above minimum wage for other time periods.

Armenta, citing an opinion letter from California’s Division of Labor Standards Enforcement, recognized that Labor Code sections 221, 222, and 223 prevent an employer “from using any part of the wage payments . . . for activities that are compensated in an amount that equals or exceeds the minimum wage, as a credit for satisfying minimum wage obligations for those activities that are compensated at less than the minimum wage under the CBA or contract.” 135 Cal.App.4th at 320. There, the workers were paid hourly for their work maintaining remote utility poles, but were not paid for all of their duties; instead, the employer paid for “productive” time only, and not for certain categories of work. *Id.* at 317. The court recognized California’s “clear legislative intent to protect the minimum wage rights of California to a greater extent than federally,” and held that the “minimum wage standard applies to each hour worked by respondents for which they were not paid.” *Id.* at 324.

The application of *Armenta* here is clear: Delta may not use the wage payments for flight

From Base Pay” covers all time away from base, but it is expense reimbursement, not wages. *Id.* at DELTA000815.

¹⁵ The Flight Pay Formula has been part of the Work Rules throughout the statutory period. (Ex. 1 at DELTA000810; Ex. 2 at DELTA000554; Ex. 3 at DELTA002426; Ex. 4 at DELTA007383.)

time (paid at flight attendants' high flight pay rates) as a credit for its minimum wage obligations for pre-flight and post-flight activities – which are not paid at all under the Flight Pay formula. *Id.* at 323-24. Because the Flight Pay formula pays flight attendants nothing when they are on duty but not blocked out for a flight, the Flight Pay formula violates California's minimum wage law.

In the ten years since the *Armenta* decision, its reasoning and holding have seen broad acceptance across courts and industries. *See Gonzalez v. Downtown LA Motors, LP*, 215 Cal.App.4th 36, 51 (2013) (this analysis “applies whenever an employer and employee have agreed that certain work will be compensated at a rate that exceeds the minimum wage and other work time will be compensated at a lower rate.”); *Ontiveros v. Zamora*, 2009 WL 425962, at *3 (E.D. Cal. 2009) (rejecting employer's motion for judgment on the pleadings where plaintiff alleged “that employees are not necessarily compensated for every hour worked”); *Cardenas v. McLane FoodServices, Inc.*, 796 F.Supp.2d 1246, 1252 (C.D. Cal. 2011) (“a piece-rate formula that does not compensate directly for all time worked does not comply with California Labor Codes, even if, averaged out, it would pay at least minimum wage for all hours worked.”); *Quezada v. Con-Way Freight, Inc.*, 2012 WL 2847609, at *6 (N.D. Cal. 2012) (“California law does not allow an employer to ‘build in’ time for non-driving tasks into a piece-rate compensation system. . . . [E]mployees must be directly compensated for all time worked.”); *Balasanyan v. Nordstrom, Inc.*, 913 F.Supp.2d 1001, 1006 (S.D. Cal. 2012) (“compensation must be directly tied to the activity being done”); *Ridgeway v. Wal-Mart Stores, Inc.*, 2014 WL 2600326, at *5 (N.D. Cal. 2014) (truck drivers' pre- and post-trip work must be separately compensated, and average weekly earnings cannot support summary judgment for employer).

Delta's failure to engage with this case law is telling. Indeed, its policy of paying for hours “flown or credited” has the exact same illegal impact as the compensation plans invalidated in each of these cases. Just like in *Armenta*, Delta pays for the “most important” duty (time in flight), but not other tasks. 135 Cal.App.4th at 317 (not paid for time classified as “nonproductive,” including travel in company vehicles, loading equipment into company vehicles, and doing daily paperwork); *see also Cardenas*, 796 F.Supp.2d at 1249-50 (employer failed to separately pay for pre-shift duties, asserting they were “integral and necessary” to the primary compensable tasks).

1 The impact of Delta’s compensation plan is that Delta consistently fails to pay flight
 2 attendants for pre- and post-trip duties. This is the same impact that has been rejected in *Cardenas*,
 3 *Quezada*, and *Ridgeway*, where employers paid truck drivers per mile but failed to pay for work
 4 activities other than driving. In *Quezada*, truck drivers’ pay was “calculated by multiplying a pre-
 5 set mileage rate by the number of miles in a trip.” 2012 WL 2847609, at *1. Although the
 6 employer paid a separate hourly rate for some non-driving tasks, such as loading freight, drivers
 7 were “not compensated at their hourly rate for pre-and post-trip vehicle inspection time, or for the
 8 first hour of wait time over the course of a shift.” *Id.* Instead, the employer considered that time to
 9 be “built in to the per-mile rate.” *Id.* The same facts were presented in *Ridgeway*, where Wal-Mart
 10 paid drivers based on mileage, but did not provide separate pay for, among other things, pre- and
 11 post-trip inspections and paperwork. 2014 WL 2600326, at **3-5. Wal-Mart treated these tasks as
 12 part of the driver’s trip, and argued that they were “included as part of the driver’s ‘trip pay.’” *Id.*
 13 at *5. *Cardenas* involved a more complicated formula, which considered “(1) the number of cases
 14 of product delivered on a route; (2) the number of miles driven on a route; and (3) the number of
 15 delivery stops made on a route.” 796 F.Supp.2d at 1249. The employer in *Cardenas* also treated
 16 pre- and post-trip duties, such as vehicle inspections and picking up manifests, as being
 17 compensated by the piece-rate formula. *Id.*

18 All three courts followed *Armenta*, to hold that the employers may not rely on a piece-rate
 19 formula that does not compensate directly for all time worked, “even if, averaged out, it would pay
 20 at least minimum wage for all hours worked.” *Cardenas*, 796 F.Supp.2d. at 1252; *accord*
 21 *Ridgeway*, 2014 WL 2600326, at *5. The court in *Quezada* explained that California law does not
 22 allow an employer to “build[] in extra compensation into the piece-rate amount for mandatory
 23 work time in which the piece-rate cannot be earned.” 2012 WL 2847609, at *4.

24 While the compensation plans at issue in these cases are based on the drivers’ mileage, as
 25 opposed to hours in flight, they are functionally identical to Delta’s Flight Pay plan. *See Cardenas*,
 26 796 F.Supp.2d at 1251-52 (reasoning of *Armenta* applies whether employer pays hourly or piece-
 27 rate); *Gonzalez*, 215 Cal.App.4th at 48-49 (same). Under the Flight Pay formula, Plaintiffs receive
 28 **no** pay for work performed before the flight blocks out. Instead, Delta pays a rate above minimum

1 wage for hours in flight, and nothing for other work hours. Because the Flight Pay formula “does
 2 not compensate directly for all time worked,” it “does not comply with California Labor Codes,
 3 even if, averaged out, it would pay at least minimum wage for all hours worked.” *Cardenas*, 796
 4 F.Supp.2d at 1252; *see also Gonzalez*, 215 Cal.App.4th at 49. Where Delta applied the Flight Pay
 5 formula, and thereby paid for some (but not all) hours worked, it “violated section 1194 by failing
 6 or refusing to pay” for other uncompensated tasks. *Armenta*, 135 Cal.App.4th at 324.

7 Instead of addressing California’s minimum wage law and the cases applying it, Delta cites
 8 to the Massachusetts *DeSaint* case. Significantly, Massachusetts minimum wage law aligns with
 9 federal law, requiring that “an employee shall be paid not less than the applicable minimum wage
 10 *each week.*” *DeSaint v. Delta Air lines, Inc.*, 2015 WL 1888242, at *11 (D. Mass. 2015). For this
 11 reason (and others), the *DeSaint* case is inapposite. Indeed, *DeSaint was not a minimum wage*
 12 *case*; the plaintiffs “[did] not contend that Delta has failed to comply with the State’s minimum
 13 wage law or with any other statutory requirement.” *Id.* at *10. Instead, Plaintiffs sought their full
 14 flight pay rate for each hour on duty. *Id.* at *9. Delta’s transparent attempt to cast *DeSaint* as a
 15 minimum wage case “indistinguishable” from this one fails.

16 Delta fails to cite any California cases contrary to the substantial authority holding that all
 17 hours must be separately paid. Because the Flight Pay formula fails to pay for pre-flight and post-
 18 flight work, Plaintiffs are entitled to minimum wage payments for those uncompensated hours.
 19 *Armenta*, 135 Cal.App.4th at 321, 327.

20 **2. The 1 for 2 Duty Period Credit Formula Does Not Cure Delta’s Pervasive** 21 **Minimum Wage Violations**

22 Under the “Duty Period Credit (1 for 2)” formula, flight attendants “will be credited with 1
 23 hour of flight pay for every 2 hours on duty for any given duty period.”¹⁶ (Ex. 1, DELTA000811.)
 24 The plain language of this formula shows that it fails to compensate Plaintiffs for half of their
 25 hours worked, yet Delta brazenly asserts that this formula pays flight attendants for all their hours
 26 worked. (ECF No. 32 at 19, 26.) The crux of Delta’s argument is that the 1 for 2 Duty Period

27 ¹⁶ Some variation of the 1 for 2 Duty Credit Formula has been part of the Work Rules throughout
 28 the statutory period. (Ex. 1 at DELTA000811; Ex. 2 at DELTA000555; Ex. 3 at DELTA002428;
 Ex. 4 at DELTA007384.)

Credit formula considers all hours worked, and therefore compensates for all hours worked. (*Id.* at 19.) However, as the court in *Cardenas* explained, this argument “misunderstands the meaning of ‘compensates’ or ‘covers.’” 796 F.Supp.2d at 1253 (holding the employer’s intent was irrelevant because the pay formula “did not actually directly compensate” the time at issue). Because Delta cannot point to any evidence showing that the Duty Period Credit formula ever actually paid employees for all hours worked, Delta’s legal argument is no different than the one courts have repeatedly rejected; namely, that the average hourly compensation is above minimum wage.

Simply put, there is no factual support Delta’s argument that the 1 for 2 Duty Period Credit pays for all hours worked at half Plaintiffs’ pay rate. Indeed, Delta could not even maintain this guise throughout its entire brief, admitting that “Delta calculates the total number of credits a Flight Attendant would receive under each formula [and] **multiplies it by the Flight Attendant’s Flight Pay Rate**” before brazenly claiming *on the very next page* that “the Duty Period Credit formula . . . pays one-half of the Flight Pay Rate for every hour” on duty. (ECF No. 32 at 18-19.) Delta was right the first time; the work rules make it abundantly clear that the 1 for 2 Duty Period Credit pays only for half of the hours in a duty period.

- **Example C – Pays 1 for 2 Duty Period Credit:** A 12:30 duty day with 5:10 flight time. The pay calculation compares the flight time of 5:10, to the minimum duty period credit of 4:45, and to the 1 for 2 duty period credit of **6:15 (12:30 divided by 2)**. The total pay for this duty period is **6:15** of 1 for 2 duty period credit.

(Ex. 1 at DELTA000807 (emphasis added).)

- **Example:** You are scheduled for a turnaround worth 6:00 block time with a scheduled duty period length of 10:00. Due to an operational delay, your duty period is lengthened to 14:00. **You will be paid 7:00** for the turnaround, comprised of 6:00 block time and 1:00 of 1 for 2 duty credit (**14:00 divided by 2**).

(*Id.* at DELTA000811, Ex. 3 at DELTA002428 (emphasis added).)

This second example illustrates that the 1 for 2 Duty Period Credit is indeed a **credit**, applied as an enhancement on top of Plaintiffs’ Flight Pay. Delta’s records of flight attendant compensation bear out this fact. Flight Pay is by far the most common pay formula, and the application of any credit is the exception, not the rule. (*See* Exs. 7-9 (Plaintiffs were paid only Flight Pay for 84%, 85%, and 93% of their California flights).) Similarly, when a credit is applied, it appears in Delta’s records as an increase to the hours flown. (*See* Ex. 9 at DELTA005554

(showing one minute of duty credit added to the block time).) And the work rules and other documents make abundantly clear that the 1 for 2 Duty Period Credit applies additional hours at the *Flight Pay* rate, not *half* the Flight Pay rate.

It is precisely because of self-serving, revisionist descriptions of illegal pay practices such as those Delta advances here that the Labor Code requires disclosure pay rates. For example, the Labor Code requires wage statements disclosing “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” Cal. Lab. Code § 226. Here, none of Plaintiffs’ wage statements reflect payment for any hours at one-half their flight pay rate. (*See* Ex. 10.)¹⁷ Similarly, “[a]t the time of hiring, an employer shall provide to each employee a written notice . . . containing . . . [t]he rate or rates of pay and basis thereof.” Cal. Lab. Code § 2810.5. Delta ignored this provision of California law completely. (*See* Ex. 17.) At the end of the day, Delta’s argument that “pay for all hours at half the pay rate is the same as pay for half the hours at the full pay rate” cannot hide the reality that the 1 for 2 Duty Period Credit fails to pay Plaintiffs for all hours worked.

i. Delta’s misrepresentation of the facts does not create triable issues, and cannot support judgment in Delta’s favor

To defeat summary judgment, Delta must go beyond the generalized denials in its pleadings and offer specific facts from admissible discovery material to show that flight attendants are compensated for all hours worked. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). A party “cannot create a genuine issue of material fact simply by making assertions in its legal papers.” *Cardenas*, 796 F.Supp.2d at 1249 (citing *S.A. Empresa De Viacao Aerea Rio Grandense v. Walter Kidde & Co., Inc.*, 690 F.2d 1235, 1238 (9th Cir. 1982)). Thus, Delta’s unsupported assertion that the 1 for 2 Duty Period Credit pays for all hours work is entitled to no weight. And as discussed below, none of the testimony in the record creates genuine issues of material fact which would preclude judgment in Plaintiffs’ favor.

¹⁷ The parties agreed to exclude Plaintiffs’ wage statement claims from these cross motions for summary judgment. While Delta’s wage statements have several notable deficiencies, including Delta’s failure to report the total number of hours worked, Delta’s argument that it actually paid employees one-half their hourly rate for some hours worked would be ensure judgment in Plaintiffs’ favor on their wage statement claims—were it true.

1 For example, Mr. Moreau had ample opportunity to explain how Delta's policies pay for all
 2 hours worked, and he failed. Instead, he attempted, unconvincingly, to explain why paying a flight
 3 attendant for half of his hours is the same as paying for all his hours. Mr. Moreau's testimony
 4 devolved to the point of being incomprehensible:

5 Q. And this example does not say that under the duty period credit, the flight
 6 attendant is paid for 12 hours and 30 minutes of duty period at half their flight pay
 rate; correct?

7 [Objection omitted]

8 A. The example states that there is a 12 hour and 30 minute duty period, and it also
 9 states – as a pay calculation. And it also shows the pay calculation of 12:30
 10 divided by 2, which will establish an effective rate for the flight attendant, which is
 half of their hourly rate. So it is clear from the division of 12:30 divided by 2 that
 the calculation starts at the beginning of the duty period, and ends at the end of the
 duty period, because it is exactly the same as a duty period.

11 . . .

12 Q. . . . please show me in this example where it says that the flight pay rate is
 13 divided by two, and paid across 12 hours and 30 minutes of work?

14 [Objection omitted]

15 A. Well, the document clearly states that it is 12 hours and 30 minutes divided by
 16 two. It states that's a paid calculation. The calculation of taking the entire duty
 17 period of 12 hours and 30 minutes, which is equal to the math and divided by 2,
 18 means that when you pay that, you are paid for the entire 12 hours and 30 minutes
 19 at half the flight hourly rate. It's math.

20 (Moreau Dep. 190:24-191:14, 192:6-19.) These unintelligible explanations are insufficient to
 21 create genuine issues of material fact. More importantly, Mr. Moreau's explanation is belied by
 22 Delta's documents. A witnesses' mistaken understanding cannot correct an illegal compensation
 23 system. *Cardenas*, 796 F. Supp. 2d at 1253 ("it is irrelevant whether the pay formula was *intended*
 24 to compensate pre- and post-trip duties, or even if employees believed it covered those duties, if its
 25 formula did not actually directly compensate those pre- and post-trip duties").

26 Likewise, Plaintiffs' testimony cannot create triable fact issues. Delta cites to only *one*
 27 deposition answer, by one Plaintiff (Lehr), in support for its argument that Delta satisfied its
 28 minimum wage obligations. (*See* ECF No. 32, at 35.) But Mr. Lehr's testimony was not as Delta
 suggests, for many reasons. First, as a factual matter, Defense counsel's question was limited to
 rotations where "the duty-period credit formulation was applied." (Ex. 18 (Lehr Dep.) 236:5-
 237:16.) Second, the question was over several objections by counsel (calls for a legal conclusion,
 "vague as to 'receive minimum wage,' as to which hours?"), and it followed a series of questions

1 about whether average pay of over \$20 was greater than the legal minimum wage rates identified
 2 in Plaintiffs' complaint. (*Id.* at 233:17-236:17.) Third, even if the statement can be taken as an
 3 admission that the 1 for 2 Duty Period Credit pays for all hours worked (and it cannot), the
 4 *Cardenas* and *Ridgeway* courts rejected the argument that a witness's belief about a pay practice
 5 can outweigh reality. "It is irrelevant whether the pay formula was *intended* to compensate pre-
 6 and post-trip duties, or even if employees believed it covered those duties, if its formula did not
 7 actually directly compensate those pre- and post-trip duties." *Cardenas*, 796 F.Supp.2d at 1253.
 8 Similarly, in *Ridgeway*, the employer's "argument that plaintiffs admitted they understood they
 9 were paid for pre- and post-[trip] inspections and paperwork under the piece-rate pay plan does not
 10 compel a finding that plaintiffs have no claim for unpaid wages." 2014 WL 2600326, at *5.

11 The work rules are clear. None of the witness testimony creates a triable issue of fact
 12 preventing judgment in Plaintiffs' favor. Certainly, these statements do not negate the work rules'
 13 clear description of Delta's pay practices, sufficient to warrant judgment in Defendant's favor.¹⁸

14 *ii. The 1 for 2 Duty Period Credit supports judgment in Plaintiffs' favor*¹⁹

15 Because there are no genuine issues of material fact, the Court should enter judgement as a
 16 matter for law for Plaintiffs on two issues: (1) that Delta violates the minimum wage law when it
 17 applies the 1 for 2 Duty Period Credit formula, and (2) that the existence of that formula—even
 18 when it is not applied—cannot cure the violations inherent in the Flight Pay formula.

19 Delta's rules demonstrate that when the 1 for 2 Duty Period Credit is applied, flight
 20 attendants receive a composite number of credit hours: block hours + ((duty hours / 2) – block
 21 hours). (*See* Ex. 1, DELTA000811 ("You will be paid 7:00 for the turnaround, **comprised of 6:00**
 22 **block time and 1:00 of 1 for 2 duty credit (14:00 divided by 2).**") Much like a mechanic paid on
 23 a piece rate formula, flight attendants accrue a number of credited hours that is different from the
 24 number of hours actually worked. In those cases, for "each task, a mechanic accrues the number of
 25 labor hours assigned by the [employer policy], regardless of how much time he actually spends on

26 _____
 27 ¹⁸ Because Delta's motion fails as to Plaintiffs' minimum wage claims, the Court must also deny
 28 Delta's motion as to Plaintiffs' Sixth Cause of Action (under the UCL).

¹⁹ Delta's treatment of standby hours (i.e., payment of one hour for every two hours worked)
 similarly violates California's minimum wage law.

the task.” *Tokoshima v. Pep Boys Manny Moe & Jack of California*, 2014 WL 1677979, at *1 (N.D. Cal. 2014); *Gonzalez*, 215 Cal.App.4th at 41 (the “technician who completes a repair task accrues the number of flag hours that Mercedes-Benz assigns to that task, regardless of how long the technician actually took to complete it.”). Just as a mechanic could work an 8-hour shift and only accrue 6 credit hours, a flight attendant working a 10 hour duty period is only paid for 5 hours when the 1 for 2 Duty Period Credit is applied. In both cases, the policy fails to guarantee that workers are paid for all hours. As a result, the 1 for 2 Duty Period Credit does not prevent violations even when it is applied, and Plaintiffs are entitled to their unpaid minimum wages for each day the 1 for 2 Duty Period Credit is applied.

Delta’s reliance on the 1 for 2 Duty Period Credit does not end there, however. Delta argues that the formula ensures flight attendants are paid for every hour on duty, even when the formula does not generate payment. According to Delta, the fact that this formula is always calculated ensures compliance, even if the formula is not actually applied. Unfortunately for Delta, the *Balasanyan* court rejected this very argument:

What Nordstrom actually did was calculate the average rate that an employee earned per hour during selling time, which included up to 30 minutes of stocking assignments and 40 minutes of pre-opening and/or post-closing time, and compensated them either at the \$10.85 rate or the actual average rate earned, whichever was higher. That guarantee . . . distinguishes the matter at hand from the *Armenta* defendants. But the crux of *Armenta* is that compensation must be directly tied to the activity being done, whether it is selling on commission or preparing to sell on commission.

913 F.Supp.2d at 1006. The fact that Nordstrom paid \$10.85 an hour when the average hourly commission rate fell below that amount did not save Nordstrom when it paid employees based on commissions only. Thus, even if the Court finds that the 1 for 2 Duty Period Credit satisfies Delta’s minimum wage obligations when applied, the fact that Delta could have paid based on the 1 for 2 Duty Period Credit does not save Delta when it paid only Flight Pay.

The *Gonzalez* court rejected a similar policy that attempted to create a “minimum wage floor.” In *Gonzalez*, the employer tracked flag hours, but it also tracked all the time that the mechanics spent at the work site, whether or not they were working. 215 Cal.App.4th at 41. For each pay period, the employer calculated how much a mechanic would earn if paid the minimum wage for all “clock hours,” and, if that amount exceeded the pay based on the standard piece-rate

1 formula, the employer would supplement the pay to reach a “minimum wage floor.” *Id.* at 41-42.
 2 The court gave no weight to this fact, agreeing with the plaintiffs that workers must be “separately
 3 compensated, at the applicable minimum wage rate, for ‘each and every hour’ of time spent
 4 waiting for repair work.” *Id.* at 45.

5 Ultimately, Delta attempts to reinvigorate the averaging method so clearly rejected in
 6 *Armenta* and every case that has followed. (*See* ECF No. 32 at 27 (“Plaintiffs cannot make a valid
 7 claim . . . as it is always possible to describe the identical mathematical computation in different
 8 ways and yield the same result.”).) According to Delta, California employers are only required to
 9 pay their employees for half their hours worked, as long as the pay rate is double the minimum
 10 wage. But the fundamental problem with this argument—like similar arguments rejected in other
 11 cases—is that it allows the employer to take a credit against its minimum wage obligation by
 12 paying above the minimum wage for certain hours and below the minimum wage (or here, nothing
 13 at all) for other hours. *See Armenta*, 135 Cal.App.4th at 323. Every California court to consider
 14 this argument since *Armenta* has rejected it, and this Court must do the same.

15 **3. The Minimum Duty Period Credit (4:45) and Time Away From Base Credit** 16 **(1 for 3.5) Do Not Ensure that Flight Attendants Are Paid for Each Hour** 17 **Worked**

17 Flight Pay (which applies most frequently) and the 1 for 2 Duty Period Credit (which Delta
 18 contends carries the day) are the most important formulas for the Court to address at this time.
 19 However, the two other pay schemes (Trip Credit²⁰ and the Minimum Duty Period Credit) fail just
 20 like the 1 for 2 Duty Period Credit. Namely, they do not comply with California’s requirement that

21 ²⁰ Delta’s description of the Trip Credit formula in its briefing is much more candid than its
 22 description of the 1 for 2 Duty Credit formula. Specifically, Delta admits that under this formula,
 23 “Delta credits Flight Attendants with one hour of their Flight Pay Rate for every three and a half
 24 hours spent away from base during a rotation.” (ECF No. 32 at 21.) Delta does not suggest that this
 25 formula pays flight attendants two-sevenths of their Flight Pay rate, and Delta *admits* the Trip
 26 Credit Formula “[does not] compensat[e] Plaintiffs for all of the time they spend away from base.”
 27 (*Id.* at 28.) Perhaps this was inadvertent, or perhaps Delta recognizes that under that calculation, it
 28 would be admitting to minimum wage violations for flight attendants with less seniority than the
 Plaintiffs here. For flight attendants with fewer than five years of seniority, the Flight Pay Rate is
 under \$31.00 per hour – if that amount were divided by 3.5, the resulting rate would be below
 minimum wage. (Ex. 1 at DELTA000810.) Although the work rules describe this formula and the
 1 for 2 Duty Credit Formula with virtually identical language (“You will be credited with 1 hour of
 flight pay for every 2 hours on duty for any given duty period” and “You will receive credit and
 pay for 1 hour of flight time for each 3.5 hours you are away from base.”), Delta interprets these
 provisions very differently. (*Id.* at DELTA000811, 000813.)

1 an employer pay at least minimum wage for every hour (or portion of hour) worked. Plaintiffs are
2 therefore entitled to judgment in their favor for duty periods paid under these credits.

3 Again, the fundamental problem with these formulas is that they apply as a credit on top of
4 Plaintiffs' flight time.²¹ Mr. Moreau explained this application very clearly in describing the credit
5 Plaintiff Lehr received over the course of a three-day trip from San Francisco to Los Angeles, then
6 to Indianapolis and Atlanta, and back to San Francisco. (Moreau Dep. 222:9-223:24, Ex. 9 at
7 DELTA005552.) In addition to the Flight Pay, "14 minutes of trip hour credit were applied to this
8 rotation." (Moreau Dep. 223:19-24.) Delta makes no effort to correlate those 14 minutes of pay
9 with any 14 minutes of work. As a result, this formula does not satisfy California law: "the crux of
10 *Armenta* is that compensation must be directly tied to the activity being done." *Balasanyan*, 913
11 F.Supp.2d at 1006.

12 Similarly, the 4:45 Minimum Duty Period Credit sometimes applies to supplement a flight
13 attendant's block hours, but it does not correlate that credit to the actual work being done.²² For
14 example, according to Delta's records, Plaintiff Lehr flew from San Francisco to Atlanta on April
15 29, 2015. (Ex. 9 at DELTA005632.) Mr. Lehr was required to report at 8:55 pm; the flight blocked
16 out at 9:53 pm, and blocked in at Atlanta at 7:21 the next morning, for a total block time of 4 hours
17 and 28 minutes. (*Id.*) Under the 4:45 Minimum Duty Period Credit formula, Mr. Lehr received an
18 additional payment of 17 minutes. (*Id.*) There is no way to tie those 17 minutes of credit to any
19 particular work. They could represent 17 minutes of pre-flight work performed at SFO, 17 minutes
20 of post-flight work performed in Atlanta, or simply a credit enhancement for the work performed
21 during the flight. In any case, there is no way for Delta to reconcile this payment with the
22 requirement to pay at least the minimum wage for every hour worked.

23 Courts in California have recognized for ten years that the "minimum wage standard
24 applies to each hour worked by [plaintiffs] for which they were not paid." *Armenta*, 135
25

26 ²¹ Some variation of the Trip Credit formula has existed throughout the statutory period. (Ex. 1 at
27 DELTA000813; Ex. 2 at DELTA000557; Ex. 3 at DELTA002429; Ex. 4 at DELTA007384.)

28 ²² Some variation of the Minimum Duty Credit / Average formula has existed throughout the
statutory period. (Ex. 1 at DELTA000812; Ex. 2 at DELTA000556; Ex. 3 at DELTA002429; Ex. 4
at DELTA007384.)

Cal.App.4th at 324. Delta's default policy is to pay its flight attendants for their block hours, and not for hours before or after a flight. Delta's credit formulas, which apply in some cases and can add to the hours that Delta pays, do not cure these violations. Delta cannot show by admissible evidence that Plaintiffs were ever paid for all their hours worked. Plaintiffs are entitled to summary judgment on Delta's liability for minimum wage violations.

C. Delta Is Liable for Violations Under the Former NWA Work Rules, Because Delta Has Been Plaintiffs' Employer and Has Applied Consistent Pay Practices Throughout the Statutory Period

Delta limited its summary judgment motion to the time period from "May 1, 2012 through the present." (ECF No. 32 at 11.) Delta was well-aware that Plaintiffs assert claims for the full four-year statutory period, but chose not to pursue any argument regarding the Former NWA Work Rules. (See ECF No. 29 at 2 (ordering Delta to produce the Former NWA Work Rules and explaining that arguments regarding NWA would be appropriate subjects for a summary judgment motion).) Delta failed to present arguments that Plaintiffs' Complaint intentionally excluded time prior to May 1, 2012, or that the Northwest rules should be treated differently.

Instead, Delta's motion is based on an argument that its pay formulas complied with California law. As explained above, the Northwest formulas are either identical or functionally equivalent to Delta's policies,²³ and this Court may rule on summary judgment for the entire period in question. Because all of the work rules failed to separately pay Plaintiffs and other flight attendants for all time worked, Plaintiffs are entitled to summary judgment.

IV. CONCLUSION

The law is clear: work performed in California is covered by the California Labor Code. Because Delta fails to pay flight attendants for all hours worked, in violation of California law, Plaintiffs are entitled to summary judgment.

Dated: October 14, 2015

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Matthew C. Helland

Attorneys for Plaintiffs and Others Similarly Situated

²³ Delta admitted as much in its motion. See ECF No. 32, at 8 (Plaintiffs have "25 years as Flight Attendants subject to Delta's, or a similar, compensation system.").